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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 851,070	05/08/2001	Hiroe Takashima	2562 64977 JPW/NPL	2856

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Cooper & Dunham LLP
1185 Avenue of the Americas
New York, NY 10036

EXAMINER

BHAT, NINA NMN

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/29/2003

41

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09 851.070

Examiner

N Bhat

Applicant(s)

TAKASHIMA, HIROE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 3-52002 and 3-29-2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3 6) ☐ Other _____

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DETAILED ACTION

1. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In independent claims 1 and 6, applicant recites a sponge cake premix comprising as a main ingredient a cereal powder, a batter prepared by adding a thermo coagulation protein to the premix and then cooking the batter to make a sponge cake wherein the cereal powder comprises starch and pregelatinized starch. Applicant has drafted an aggregate claim, and should have an independent claim drawn to a dry mix, a separate dependent claim to the batter and a separate dependent claim to the method of preparing a sponge cake using microwave energy and the batter. Applicant is encouraged to make the amendment as suggested in order to advance prosecution the examiner will not restrict between the method of making the sponge cake, making the batter and the composition of the dry sponge cake premix. In making the amendments as suggested by the examiner, applicant is advised to make sure that the batter claims 11-13 are not duplicative.

2. Claims 2-9 are rejected as being dependent upon a rejected base claim.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by JP10056946.

JP10056946 teach a bakery product and dry mix for making a bakery product such as a bread, cake, or biscuit using a cereal powder, which includes a mixture, which comprises a waxy comstarch and a pregelatinized tapioca starch. the waxy corn starch is in the amount of

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30-60% by weight and the pregelatinized starch is in the amount of 20-45% by weight. The premix can include other dry ingredients such as wheat flour, leaveners, oils and fats, dry cheese, flavors, fats/oils such as shortening, butter, vegetable oil and emulsifiers.

JP10056946 further teach that the premix can be made into a batter by adding either milk or water to the dry mix, which is then mixed. The premix as described and claimed in JP10056946 anticipates the premix as claimed.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 5-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP10056946 in combination with Franssell et al.

JP10056946 teaches the invention substantially as claimed. As stated above, JP10056946 teaches a premix which includes as a main ingredient a cereal powder comprising starch and pregelatinized starch. The pre-mix includes other ingredients which include, proteins, flour, fats/oils, flavors, leaveners, emulsifiers to which milk or water is added to form a

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batter from the dry pre-mix. The premix as described in JP10056946 can be used for making a number of bakery type products, which include bread, muffins, and cakes.

However, JP10056946 does not teach how the batter is baked, i.e. specifically using microwave energy as claimed or whether the pre-mix includes a dietary fiber.

Franssell et al. teach preparing a dry mix for making muffins and other bakery items using microwave energy. The dry mix includes flour, pregelatinized starch, emulsified shortening, chemical leavening agents, color/flavoring materials and combinations of psyllium and guar gum. The dry mix can include optional components, which include flavor/coloring agents, such as cocoa, egg white solids, salt, coloring agents, flavoring agents, nuts and fruit. Other ingredients include oat bran and psyllium. Franssell et al. teach that the dry mix can be made into a batter by adding to the dry mix water, liquid oil, or other liquid ingredients.[Note Column 4, lines 15 through Column 8, line 38, Column 9, lines 1-21 and Example 8] After making the batter, the batter is deposited into a muffin paper cups and microwave heated for 1-2 minutes.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a dry mix which includes dietary fiber and can be made into a batter which is microwaveable to provide bakery items such as breads, sponge cakes or muffins from the combined teachings of JP10056946 and Franssell because the dry premix which includes as a main ingredient a cereal powder which comprises a starch and pregelatinized starch for making bakery items such as bread, cakes, muffins has been specifically taught by JP10056946, the deficiencies in JP10056946 is that has not been specifically taught to use the premix or batter to be cooked using microwave energy. JP10056946 does not teach adding dietary fibers specifically. Franssell et al. teach making a dry premix, and then a batter from the premix which includes flour, pregelatinized starch, sugar, shortening component, chemical

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leavening agent, gum system and optional components. The premix does include adding a dietary fiber, which includes psyllium and or oat bran. The premix/batter from the premix is designed for microwave cooking. To use the specific cereal powder ingredients which include a starch and pregelatinized starch as a flour replacement as taught by JP 10056946 in the premix of Farnsell et al. would have been obvious to one having ordinary skill in the art. With respect to the viscosity of the batter, it would have been obvious from both JP10056946 and Franssell both teaching a dry bakery premix which is made into a batter by the addition of a liquids to provide a batter which would provide a viscosity as claimed since the compositional ingredients of the premix proportions are within the range as claimed by applicant as well as the amount of liquid to make the batter thus to optimize the viscosity of the batter which provides best results would have been obvious to one having ordinary skill in the art absent criticality in showing.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP200125795 [abstract only] teach a batter mix for fried foods, which includes a wheat flour with hydrolyzed wheat gluten, pregelatinized starch or mixtures thereof, dextrin, glucomannan, alkaline coagulant. Water is added to the mix to provide a batter. Lazarus teaches a dry mix for the preparation of a puffable food, which includes native starches, maltodextrin and pregelatinized starches. The puffed food is crunchy and is not a bread or cake product. Wernecke teaches a dietetic low protein bread mix which includes wheat starch, pregelatinized starch as a structure enhancer. Water was added in an amount to form dough. JP409037706 teach a dry mix for making the shell of a cream puff, which includes a pregelatinized starch and a pregelatinized and cross-lined starch in specific proportions, which is then made into a batter and cooked to make the puff or shell of the cream puff. Jackson et al. teach a dry mix for microwave layer cake. Johannes teaches a dry mix for frosted brownies. Wahba et al. teach an angel food cake mix.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat
Primary Examiner
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May 27, 2003